UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|---|---|---|---|
| 10/537,911 | 06/08/2005 | Yasue Nakamura | 050370 | 6716 |

23850 7590 11/24/2009

KRATZ, QUINTOS & HANSON, LLP
1420 K Street, N.W.
Suite 400
WASHINGTON, DC 20005

| EXAMINER | |
|---|---|
| DOAN, ROBYN KIEU | |
| ART UNIT | PAPER NUMBER |
| 3732 | |
| MAIL DATE | DELIVERY MODE |
| 11/24/2009 | PAPER |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

| Office Action Summary | Application No. | Applicant(s) | |
|---|---|---|---|
| | 10/537,911 | NAKAMURA, YASUE | |
| | Examiner | Art Unit | |
| | Robyn Doan | 3732 | |

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1)☒ Responsive to communication(s) filed on *25 June 2009*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4)☒ Claim(s) *1,2 and 4-30* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,2 and 4-30* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

**Application Papers**

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

**DETAILED ACTION**

Applicant's response filed 6/25/09 has been entered and carefully considered. Arguments regarding the 35 U.S.C. 102 (b) and 103 (a) have not been found to be persuasive, therefore, claims 1-2, 4-30 are rejected under the same ground rejections as set forth in the office action mailed 3/31/09.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 2, 5-7 are rejected under 35 U.S.C. 102(b) as being anticipated by JP 4-108004 (IDS cited reference).

JP '004 discloses a hair curler (figs. 1-4) comprising the essential claimed invention such as having a heating element with a pair of heat conductors (2), wherein the heat conductors forming a plate like member and having arcuate portions (at 11) bent from both ends of the plate like member (applicant is noted that the heat conductors having arcuate portions from both ends at 11 as claimed), a heater (1) fixed to terminal inside of a cap (5) is contained inside a rod having an opening (see fig. 1) at one end so as to seal the opening with the cap.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1, 17, 19-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP '004 in view of Carter (USP 4,242,567).

JP '004 discloses the essential claimed invention (see figs. 1, 2) however does the heating element having a support plate with an opening, wherein a heater fitted into the opening. Carter discloses a heating element of a hair device (fig. 2) having a support plate (34) with openings (38) and wherein heaters (40) fitted inside each of the opening. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to modify the support plate (10) of JP '004 into the heating element of Carter in order to distribute heat evently.

Claims 4, is rejected under 35 U.S.C. 103(a) as being unpatentable over JP '004 in view of JP 4-103803 (IDS cited reference).

JP '004 discloses the essential claimed invention except for a portion of the heat conductor in contact with the heater is formed into a projecting surface. JP '803 discloses a hair curler having a heat conductor in contact with the heater is formed into a projecting surface (fig. 1). It would have been obvious to one having an ordinary skill in the art at the time the invention was made to construct the projecting surface as taught by JP 803 into the hair curler of JP '004 for the intended use purpose.

Claims 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over JP '004 in view of Carter and further in view of JP 4-103803 (IDS cited reference).

JP '004 in view of Carter disclose the essential claimed invention except for a portion of the heat conductor in contact with the heater is formed into a projecting surface. JP '803 discloses a hair curler having a heat conductor in contact with the heater is formed into a projecting surface (fig. 1). It would have been obvious to one having an ordinary skill in the art at the time the invention was made to construct the projecting surface as taught by JP 803 into the hair curler of JP '004 in view of Carter for the intended use purpose.

Claims 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP '00 in view of JP 9-23920 (IDS cited reference).

JP '004 discloses the essential claimed invention except for the rod made of heat resistant plastic formed in an arcuate shape and the diameter at the center being smaller than those at both ends. JP '920 discloses a hair curler having a rod with a diameter at the center being smaller than those at both ends (see fig. 7). It would have been obvious to one having an ordinary skill in the art at the time the invention was made to construct the particular rod as taught by JP '920 into the hair curler of JP '004 for the intended use purpose. And it would have been obvious to one having an ordinary skill in the art at the time the invention was made to construct the rod formed in an arcuate shape, since such a modification would have involved a mere change in the

shape of the non critical (specification page 4, lines 2-5) component. A change in shape is generally recognized as being within the level or ordinary skill in the art. In re Rose, 105 USPQ 237 (CCPA 1955).

Claims 22-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP '004 in view of Carter and further in view of JP 9-23920 (IDS cited reference).

JP '004 in view of Carter disclose the essential claimed invention except for the rod made of heat resistant plastic formed in an arcuate shape and the diameter at the center being smaller than those at both ends. JP '920 discloses a hair curler having a rod with a diameter at the center being smaller than those at both ends (see fig. 7). It would have been obvious to one having an ordinary skill in the art at the time the invention was made to construct the particular rod as taught by JP '920 into the hair curler of JP '004 in view of Carter for the intended use purpose. And it would have been obvious to one having an ordinary skill in the art at the time the invention was made to construct the rod formed in an arcuate shape, since such a modification would have involved a mere change in the shape of the non critical (specification page 4, lines 2-5) component. A change in shape is generally recognized as being within the level or ordinary skill in the art. In re Rose, 105 USPQ 237 (CCPA 1955).

Claims 11,12 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP '004 in view of JP 3045250 (IDS cited reference).

JP '004 discloses the essential claimed invention except for the heat resistant plastic material having a far infrared radioactive substance. JP 3045250 discloses a hair curler having a far infrared radioactive substance. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to construct the far infrared substance as taught by JP '250 into the hair curler of JP '004 in order to avoid damage to the hair.

Claims 25, 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP '004 in view of Carter and further in view of JP 3045250 (IDS cited reference).

JP '004 in view of Carter disclose the essential claimed invention except for the heat resistant plastic material having a far infrared radioactive substance. JP 3045250 discloses a hair curler having a far infrared radioactive substance. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to construct the far infrared substance as taught by JP '250 into the hair curler of JP '004 in view of Carter in order to avoid damage to the hair

Claims 13-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP '004 in view of JP 2798374 (IDS cited reference).

JP '004 discloses the essential claimed invention except for a plurality of curlers disconnectably connected to a cord extending from a distributor which comprises a controller, a base mount and a container. JP '374 discloses a curler disconnectably connected to a cord extending from a distributor (see figs 1, 4). It would have been obvious to one having an ordinary skill in the art at the time the invention was made to

employ the distributor with a cord that is disconnectably with the curler as taught by JP '374 into the device of '004 in order to conveniently curl the hair.

Claims 13-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP '004 in view of Carter and further in view of JP 2798374 (IDS cited reference).

JP '004 004 in view of Carter disclose the essential claimed invention except for a plurality of curlers disconnectably connected to a cord extending from a distributor which comprises a controller, a base mount and a container. JP '374 discloses a curler disconnectably connected to a cord extending from a distributor (see figs 1, 4). It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the distributor with a cord that is disconnectably with the curler as taught by JP '374 into the device of '004 004 in view of Carter in order to conveniently curl the hair.

***Response to Arguments***

Applicant has argued that the plate like member 10 of JP '004 only have one arcuate portion 11 bent from one end (at gap 12) of the plate like member, not at both ends of the plate like member. However, Applicant is noted that the claims recited "a pair of heat conductors formed of a plate like member and arcuate portions bent from both ends of the plate like member", such limitations being treated to a broadest reasonable interpretation, therefor the claims being interpreted as each of the heat conductor having a plate like member and an arcuate portion bent from one end of the plate like member. Applicant is noted that the claims do not recite each of the heat conductors having a plate like member and arcuate portions, wherein the arcuate

portions of each plate like member bent from both ends of the plate like member. As such, JP '004 meets the claimed language.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robyn Doan whose telephone number is (571) 272-4711. The examiner can normally be reached on Mon-Fri 8:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris Rodriguez can be reached on (571) 272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Robyn Doan/
Primary Examiner, Art Unit 3732